IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 17TH OCTOBER 2006 / 25TH ASWINA 1928

MFA. No. 667 of 1992(E)

OPMV.19/1991 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KASARAGOD

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APPELLANT/PETITIONER:

K. PARVATHI AMMA
W/O. SUBRAMANYA BHAT
KUNCHINADKA HOUSE
POST KATUKUKKE
KASARAGOD TALUK.

BY ADV. SRI.M.SASINDRAN

RESPONDENTS/RESPONDENTS:

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1. P. DIVAKARA
   SON OF MAHALINGA PATALI
   TAILOR, POST PERLA, KASARAGOD TALUK.

2. K.M. MOHAMMED
   SON OF KHADER
   KALLAMADKA HOUSE, PUTHIGE VILLAGE,
   POST PUTHIGE, KASARAGOD TALUK.

3. BRANCH MANAGER
   UNITED INDIA INSURANCE COMPANY LTD.
   M.G. ROAD, KASARAGOD.

4. M.V. SHENOY
   S/O. M.A. SHENOY, PADMA GARDEN,
   KUMBALA, KOIPADY VILLAGE
   P.O. KUMBALA, KASARAGOD.

ADDITIONAL R4 IMPLEADED AS PER ORDER DTD. 17.10.2006
IN C.M.P. NO. 2533/1993

BY ADV. SRI.SIBY MATHEW for R3
SRI.S.R.DAYANANDA PRABHU for ADDL. R4

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 17/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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M.F.A. 667 OF 1992
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Dated this the 17th day of October, 2006

JUDGMENT

The appellant challenges the dismissal of the claim petition filed by her before the Motor Accident Claims Tribunal, Kasaragod for compensation for injuries allegedly sustained by her as a result of a motor accident.

2. The claimant arrayed respondents 1 to 3 and filed the claim petition. The second respondent filed written statement stating that on the date of the accident, the vehicle was owned by another, who was later on impleaded as the additional fourth respondent. He remained ex-parte in the proceedings.

3. The claimant contended that she was a passenger in a jeep which collided with a car driven by the first respondent and owned by the second respondent, resulting in injuries to her. The first respondent and the additional fourth respondent did not

contest the proceedings. The second respondent though, as already noticed, pleaded that the vehicle was sold to the additional fourth respondent, did not adduce any evidence in support of the said plea. The third respondent insurer admitted the policy and stated that it stood in the name of the second respondent. It did not obtain leave of the Tribunal under Section 170 of the Motor Vehicles Act, 1988 and therefore was precluded from urging grounds which were available to the insured.

4. The claimant gave evidence as PW1. PW2 gave evidence that he was a co-passenger of the claimant in the jeep. Both of them spoke about the accident. The Tribunal did not notice any contradiction between their depositions. However, in spite of such corroborated version of two witnesses who were subjected to cross examination, the Tribunal held that the case of negligence as pleaded is not proved and that there was no material to hold that the claimant was a passenger in the accident as alleged by her.

5. The finding of the Tribunal against the claimant was on the premise that no police papers were produced and that no wound certificate was produced to connect the injuries sustained by the claimant as evidenced by Ext. A4 discharge notes in accident.

6. As already noticed, the insurer had no leave of the Tribunal under Section 170 of the Motor Vehicles Act, 1988. PW1, the claimant was cross examined on behalf of the second respondent on whom she alleged the ownership of the vehicle. PW1 was questioned regarding the nature of the accident, the scene of occurrence and other details as regards the nature of the impact between the two vehicles. On behalf of the second respondent owner, it was also suggested to the claimant PW1 that the car driven by the first respondent came in a slow speed and that the jeep in which the claimant was travelling was driven at a high speed and carelessly in an attempt to reach in time for a wedding, for which the parties were proceeding in the jeep. This definite suggestion in the cross examination on behalf of the

second respondent owner, rules out all possibilities of the assumptions that have been drawn by the Tribunal to hold that the claimant had not proved that she was travelling in the jeep. The doctrine of res ipsa loquitur applies to this case where the driver of the offending vehicle or its owner did not give any evidence regarding the occurrence. I say so because, it was also the suggestion on behalf of the second respondent to PW1 that the scene of occurrence was a curve and that three jeeps were proceeding in a row while the car driven by the first respondent came from the opposite direction. When two vehicles proceeding in the opposite directions have collided in a public road, the accident bespeaks negligence, may be of one of them or both of them. But then, in the absence of any evidence on the side of the driver or owner impleaded in this case as respondents, it is improper to hold as to whether it is the first respondent on the one hand or the driver of the jeep on the other are liable to contribution as regards negligence. At any rate, the claimant cannot be mulcted with negligence. For the aforesaid reasons, the findings of the Tribunal that the accident is not proved to

have occurred as a result of the negligence of the first respondent and that the claimant had not proved that she was travelling in the jeep are set aside. It is held that the claimant is entitled to compensation.

7. Ext. A4 discharge notes of the Kasaragod Nursing Home shows that the claimant, a female then aged 55 years, was admitted to that hospital on 1.1.1987 and discharged on 14.1.1987. Injuries noticed in the said discharge notes include injuries to the chin, neck, lacerated wound on the face and contusion in the left eye. X-ray also showed injury to the right wrist. She was found to have ophthalmoplegia as a result of the contusion to the eye. Though there is no oral evidence of any doctor corroborating the discharge notes, it reflects administration of various pain killers and various other medicines during the period of hospitalisation, as also, after she was discharged. It also shows that she was administered plaster of paris cast on the wrist and that she continued treatment as an outpatient thereafter, at least, till 12.2.1987. I may notice that in

the claim petition the only injury stated is the injury to the eye. But then, the pleading in the claim petition is that she was still undergoing treatment. It is also to be noticed that the claim petition refers to permanent disability apart from various sufferings as also defect to close the left eye. Exhibits A1, A2 & A3 are the bills for X-rays, medicines, hospitalisation charges etc.

8. The claimant is a house wife. Reading her testimony as PW1 as a whole, I do not find any ground to disbelieve her and hold that the claim petition is baseless. It is not a case where it could be said that a false and fabricated story was being foisted to claim compensation. The Tribunal ought to have been not realistic in its approach in considering the case of the claimant.

9. The awards of Tribunals are appealable under the statute. May be, the proceedings are summary in nature. That does not also mean that the award be summary. I am constrained to say so because, it is a fundamental principle of

practice and procedure that when a hierarchy courts are likely to determine an issue and when an appeal is provided to a superior court, the court of first instance is obliged to deliver its verdict on all the issues arising for decision. By merely holding that the case of negligence is not proved, it is inappropriate for the Tribunal to leave undecided the issue as to quantum of compensation. In the event of the finding of negligence being in favour of the claimants, such an adjudication by the court of first instance will aid the superior courts to decide matters, as is required. Since the Tribunal has not considered the question of quantum of compensation, it is necessary that each of the documents and the evidence of PW1 are adverted to by this court, for determining the quantum of compensation, without the aid of the judgment of the trial court in that regard.

10. The following amounts are proved with reference to the materials on record:

Document (Ext. Nos.)	Nature of the document	Amount (Rs.)	
Ext. A1(1)	X-ray bill		30.00
Ext. A1(2)	X-ray bill		70.00
Ext. A2 series	Medicines/dispensary bills		307.33
Ext. A2(1)		10.34	
Ext. A2(2)		1.00	
Ext. A2(3)		11.14	
Ext. A2(4)		7.55	
Ext. A2(5)		29.09	
Ext. A2(6)		4.39	
Ext. A2(7)		18.82	
Ext. A2(8)		7.78	
Ext. A2(9)		12.70	
Ext. A2(10)		2.65	
Ext. A2(11)		78.73	
Ext. A2(12)		3.52	
Ext. A2(13)		13.19	
Ext. A2(14)		9.48	
Ext. A2(15)		19.59	
Ext. A2(16)		1.75	
Ext. A2(17)		9.77	
Ext. A2(18)		1.15	
Ext. A2(19)		17.20	
Ext. A2(20)		25.53	
Ext. A2(21)		21.96	
		307.33	
Ext. A3	Bill inpatient charges including room rent, nursing charges, laboratory plaster of paris,dressing charges etc.		601.00
	Total		Rs.1008.33

The total amounts thus proved by Exts. A1 to A3 corroborated by PW1 is Rs.1008.33. The claimant has stated as PW1 that a person was engaged to take care of her in the hospital and that she was given Rs. 400/- and an amount of Rs. 600/- was spent for being taken to the hospital which is ten miles away. The claimant was entitled to transportation charges to the hospital, return to home, and visit on different occasions as disclosed by Ext. A4 discharge notes. She stated that she spent Rs. 500/- for extra nourishment and spent Rs. 1000/- to 2000/- towards medicine. There is no reason to disbelieve the version of PW1 regarding the different expenses. Hence, an amount of Rs. 400/- is awarded for expenses incurred by the bystander, an amount of Rs. 600/- is awarded for transportation charges by the claimant on different occasions and an amount of Rs. 500/- is awarded for extra nourishment. Rs. 1,000/- is awarded towards medicine spent after discharge in the hospital. No separate amount is being awarded towards costs of medicine since that is apparently taken care of by the amounts granted on the basis of Exhibits A1 to A3.

11. Having regard to the pain and suffering that the claimant suffered in connection with the accident, she is awarded an amount of Rs. 3,000/- as compensation for pain and sufferings. She has claimed loss of earnings of Rs. 54,000/-. This, presumably, is the amount that she says is required at the rate of Rs. 300/- per month to be paid to some other person to carry on whatever the claimant was doing as a house wife, at home. The claimant is awarded a lumpsum of Rs. 2,000/- for the injury suffered by her.

In the result, this appeal is allowed in part, allowing the claimant to recover from the respondents an amount of Rs.8508.33 (rounded to Rs.8510/-) with interest at 6% per annum from the date of the claim petition viz.10.7.1991. The third respondent insurer is directed to satisfy the award within three months.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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